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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Gabbitas Educational Consultant's Limited

Serial No. 79002739

Craig A. Fieschko of DeWitt Ross & Stevens SC for Gabbitas Educational Consultant's Limited.

Toni Hickey, Trademark Examining Attorney, Law Office 112 (Tomas V. Vlcek, Managing Attorney).

Before Bucher, Grendel and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

An application has been filed by Gabbitas Educational Consultant's Limited to register the mark GABBITAS (in standard character form) for "employment agency services, namely, employment hiring, personnel recruiting, placement, staffing and career networking services; advertising and marketing in the field of education and training; business development services, namely, analysis and consultation services related to strategy and project management in the field of education" in International Class 35, "providing information on education,

namely, providing information to assist others in the selection of schools, tutors, teachers, and training courses; educational research services for others, namely, analyzing and assessing educational and training establishments and teachers and administration in the field of education and training; training teachers, namely, providing courses of instruction in primary and secondary education; career counseling services, namely, providing advice and career development counseling" in International Class 41 and "guardianship services, namely, guardianship of children and students" in International Class 45.¹

The examining attorney has refused registration under Section 2(e)(4) of the Trademark Act (15 U.S.C. §1052(e)(4)) on the ground that GABBITAS is primarily merely a surname.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. An oral hearing was not requested.

We affirm the refusal to register.

A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance to the purchasing public is that of a surname. See *In re United Distillers plc*, 56 USPQ2d 1220 (TTAB 2000). The burden is on the examining attorney to establish a prima facie case that a term is primarily merely a

¹ Application Serial No. 79002739, filed March 2, 2004, under Trademark Act Section 66(a) (15 U.S.C. §1141(f)).

surname. In *re* *Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). Among the factors to be considered in determining whether a term is primarily merely a surname are (1) the degree of a surname's rareness; (2) whether anyone connected with applicant has that surname; (3) whether the term has any recognized meaning other than that of a surname; and (4) whether the term has the "look and sound" of a surname. See *In re* *Benthin Management GmbH*, 37 USPQ2d 1332, 1333 (TTAB 1995). See also *In re* *Gregory*, 70 USPQ2d 1792 (TTAB 2004).

In support of her refusal, the examining attorney provided a listing of 79 entries for individuals with the surname GABBITAS retrieved from the Lexis/Nexis USFIND Person Locator database. The examining attorney also submitted Lexis/Nexis printouts of articles from various publications that show several individuals throughout the United States who have the surname GABBITAS.² In addition, she submitted a printout from the online dictionary search database OneLook showing no entries for GABBITAS, a printout from a Latin dictionary from the University of Notre Dame's website showing no entries for GABBITAS, and printouts

² In reviewing this evidence, we have disregarded multiple references to the same individuals in the USFIND database and different Nexis stories. We have also disregarded articles retrieved from the Lexis/Nexis database that appear to be from foreign publications. Unlike the websites on the Internet, we do not know whether these publications are available to the general U.S. population and the Lexis/Nexis database is only available to subscribers, thus, these foreign publications are not indicative of U.S. consumers' exposure to or perception of GABBITAS as a surname.

from the Babel Fish Translation service on the Altavista website showing no Spanish, Italian or French translations for GABBITAS.

Applicant submitted excerpts from its website and search results from the Google search engine on the terms "gabbitas" and "gabbitas education."

We first determine whether GABBITAS is a rare surname. The evidence of 79 entries (a few of which appear to be duplicates) is not substantial evidence that the term GABBITAS is a common surname. With regard to the articles, they are not sufficient to compensate for the small number of entries in the USFIND database. Compare *In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004) ("[E]xistence of these [public officials] with the surname ROGAN leads us to conclude that the name may be rare when viewed in terms of frequency of use as a surname in the general population, but not at all rare when viewed as a name repeated in the media and in terms of public perception."). Therefore, we conclude that the surname GABBITAS is not a common surname in the United States, and thus it would be somewhat rare. See *United Distillers*, 56 USPQ2d at 1221 ("Hackler" held to be a rare surname despite 1295 listings in phone directories).³

³ While applicant argues that the number of GABBITAS hits against the total U.S. population is very small, we note that given "the large number of different surnames in the United States, even the most common surnames would represent but small fractions of the total population." See *Gregory*, 70 USPQ2d at 1785.

However, the fact that a term is not a common surname does not mean that a surname would not be considered to be primarily merely a surname. See *In re Adrian Giger and Thomas Giger*, 78 USPQ2d 1405 (TTAB 2006). See also *In re E. Martinoni Co.*, 189 USPQ 589, 590 (TTAB 1975); and *In re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564, 1566 (TTAB 1988). Here, the listings and articles show use of GABBITAS as a surname in Dallas, Texas; Salt Lake City, Utah; Bakersfield, California; Rock Hill, South Carolina; New York, New York; Hartford, Connecticut; Boise, Idaho; Los Angeles, California; Phoenix, Arizona; Alexandria, Virginia; Spokane, Washington; Hoback Junction, Wyoming; Lincoln Park, Michigan; New Orleans, Louisiana; and South Bend, Indiana. In view of this evidence, we find that the surname significance of GABBITAS would be recognized by prospective purchasers. See *In re Etablissements Darty et Fils*, *supra*.

The second factor we consider is whether anyone associated with applicant has the surname GABBITAS. In this case, applicant's founder was named John Gabbitas. Furthermore, applicant's website includes information about the origin of its name coming from its founder John Gabbitas. Thus, not only is GABBITAS the surname of applicant's founder, but its surname significance is featured in applicant's promotional material. See *Giger*, 78 USPQ2d at 9. Applicant's reliance on *Benthin* is misplaced. In that case, the stylization and design elements in

the mark overcame the fact that the managing director's surname was Benthin -- a factor not relevant in the case before us.

The third factor we consider is whether there is evidence of another recognized meaning of the term GABBITAS. In this case, the examining attorney submitted evidence that the term GABBITAS has no other meaning in English, Latin, French, Spanish or Italian. Compare *In re Isabella Fiore LLC*, 75 USPQ2d 1564, 1568 (TTAB 2005). Applicant did not present evidence on this factor.

Finally, we consider whether GABBITAS has the look and sound of a surname. As stated in *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm'r Pats. 1955):

There are some names which by their very nature have only a surname significance even though they are rare surnames. "Seidenberg," if rare, would be in this class. And there are others which have no meaning--well known or otherwise--and are in fact surnames which do not, when applied to goods as trademarks, create the impression of being surnames.

Applicant argues that GABBATIS has the look and feel of a Latin word and that in relation to applicant's education-centered services, prospective purchasers would make that connection in view of the common use of Latin mottos in connection with educational institutions. Applicant specifically argued:

Consumers of educational services are accustomed to the use of classical terminology and mottoes by educational service providers; for example, the motto of Harvard University (Cambridge, MA) is VERITAS; Howard University (Washington, DC) is VERITAS ET UTILITAS; Villanova University (Villanova, PA) is VERITAS, UNITAS, CARITAS; University of North Carolina (Chapel

Hill, NC) is LUX LIBERTAS; etc. Terms such as GRAVITAS (a term meaning weight, meaning, and/or dignity) are often used to describe educational pursuits...Thus, an ordinary consumer would simply regard GABBITAS, as applied to the services in question here, as a classical Latin term having some meaning related to educational ideals, and having some lofty and erudite meaning, without knowing or caring what that meaning is. Br. pp. 8-9.

We note that there is no evidence of record to support applicant's contention nor is this the type of fact of which we may take judicial notice. While the examining attorney did not dispute this assertion first made in applicant's response to the first office action, in her brief she did note the lack of evidence to support the assertion. In any event, even assuming Latin mottos are commonly used by educational institutions, we do not believe that GABBITAS has the look and feel of a Latin word, nor is it being used as a motto but rather as applicant's name. We note, in particular, the double BB in GABBITAS in contrast to the examples given by applicant which do not have double consonants or a B appearing adjacent to the suffixes ITAS or TAS.

Taken in the larger context, we conclude that GABBITAS has the look and feel of a surname. First, there are numerous individuals with the surname GABBITAS throughout the United States. Second, it has no other known significance. "It would not be perceived as an initialism or acronym, and does not have the appearance of having been coined by combining a root element that has a readily understood meaning in its own right with

either a prefix or a suffix." Gregory, 70 USPQ2d at 1796.

Therefore, this factor favors the examining attorney's position.

In conclusion, while GABBITAS is a rare surname, it has the look and feel of a surname, the record points to no other recognized meaning for this term, and it is the surname of applicant's founder. Thus, when we view the term GABBITAS under the factors set out in Benthin, we conclude that the examining attorney has met her initial burden of showing that the term GABBITAS would primarily be viewed as a surname and applicant has not rebutted this prima facie case.

Decision: The refusal to register under Section 2(e)(4) of the Trademark Act on the ground that it is primarily merely a surname is affirmed.